

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	June 27, 2005)	
)	
ENFORCEMENT OF INTERCONNECTION)	DOCKET NO.
AGREEMENT BETWEEN BELL SOUTH)	02-01203
TELECOMMUNICATIONS, INC. AND)	
ITC^DELTA COM COMMUNICATIONS, INC.)	
)	
ENFORCEMENT OF INTERCONNECTION)	
AGREEMENT BETWEEN BELL SOUTH)	
TELECOMMUNICATIONS, INC. AND XO)	
TENNESSEE, INC.)	

**ORDER DELEGATING HEARING OFFICER AUTHORITY TO
DISPOSE OF POST-HEARING ISSUES**

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on April 4, 2005 to consider authorizing the Hearing Officer to dispose of post-hearing issues.

BACKGROUND

An Interconnection Agreement between BellSouth Telecommunications, Inc. ("BellSouth") and ITC^DeltaCom Communications, Inc. ("DeltaCom") was approved by the TRA on August 10, 2001. Included in this agreement was a section entitled "Special Access Service Conversions" found in sections 8.3.5.1 and 8.3.5.3. An Interconnection Agreement between BellSouth and XO Tennessee, Inc. ("XO"), approved by the Authority on August 29, 2000, also contained a section entitled "Special Access Service Conversions" in section 1.4. Pursuant to these provisions, BellSouth provided a thirty-day notice to DeltaCom and XO

(collectively the “CLECs”) on May 23, 2002, and April 26, 2002, respectively, of its intent to conduct an audit. DeltaCom and XO refused to allow BellSouth to proceed with an audit under the terms proposed by BellSouth.

On November 5, 2002, BellSouth filed the *Complaint of BellSouth Telecommunications, Inc to Enforce Interconnection Agreement and Request for Expedited Proceedings* against DeltaCom in TRA Docket No. 02-01203 and an identical complaint bearing the same title against XO in TRA Docket No. 02-01204, alleging a violation of the respective audit provisions. Because these two dockets raised identical issues, the Chairman of the Authority consolidated the dockets into Docket No. 02-01203 at a regularly scheduled Authority Conference held on November 18, 2002.

On December 5, 2002, DeltaCom filed the *Answer and Counter-Complaint of ITC^DeltaCom Communications, Inc.*, and XO filed the *Answer and Counter-Complaint of XO Tennessee, Inc.* Both of these filings alleged that BellSouth’s request to conduct an audit was inconsistent with both the language of the Interconnection Agreements and the requirements of the Federal Communications Commission (“FCC” or “Commission”). Specifically, the CLECs argued that BellSouth was required to articulate a justification prior to initiating the audit. The CLECs also argued that the federal audit provisions, as well as the audit provisions in the Interconnection Agreements, apply only to converted, not new, Extended Enhanced Loops (“EELs”). Finally, the CLECs requested that BellSouth be required to select a “truly independent auditor” and that such auditor examine only a “representative sampling of EELs” rather than every EEL employed by the CLECs. On December 22, 2003, BellSouth filed the *Motion of BellSouth Telecommunications, Inc for Summary Judgment Order Requiring Audit (“BellSouth’s Motion”)*. Also on December 22, 2003, the CLECs filed the *Joint Motion of XO and ITC^DeltaCom for Summary Judgment (“CLECs’ Motion”)*.

On January 27, 2003 a Pre-Hearing Officer was appointed to this Docket for the purpose of hearing oral arguments on the motions for summary judgment of BellSouth and the CLECs. The *Report and Recommendation of the Pre-Hearing Officer* (“*Report and Recommendation*”) was filed with the Authority on February 13, 2004 and was unanimously approved by the panel on March 22, 2004. As stated in the *Report and Recommendation*, *BellSouth's Motion* was denied, and the *CLECs' Motion* was granted to the extent that it sought to limit BellSouth's ability to audit converted EELs only. The panel determined that BellSouth was not required to articulate a justification prior to commencement of an audit conducted pursuant to the terms of the interconnection agreement and that BellSouth must submit for TRA approval a letter of engagement between itself and its independent auditor. Finally, the panel determined that BellSouth must submit for TRA approval a proposed methodology for conducting each audit of converted EELs.

On August 2, 2004, the Authority received an engagement letter that was sent by BellSouth to American Consultants Alliance (“ACA”) which requested that ACA perform the audits. The letter also included a proposed methodology for conducting the audits and a request that a Hearing Officer be appointed to this Docket to handle any remaining issues. On August 18, 2004, the Authority received a letter from the CLECs agreeing with BellSouth's request for a Hearing Officer and requesting that a status conference be convened in order to address the proposed audit and to attempt to resolve any remaining issues. The Hearing Officer held the status conference on December 1, 2004. At the status conference, BellSouth expressed a desire to proceed with the audit, while the CLECs exhibited concern as to several aspects of the prospective audit.¹ In response to the dispute, the Hearing Officer expressed her belief that she did not have the authority to act on post-hearing matters. However, the Hearing Officer stated

¹ Transcript of Status Conference, p. 2-9 (December 1, 2004)

she would take the issue under advisement.² On December 10, 2004, the Authority received a letter from BellSouth providing additional information regarding the prospective audits. In that letter BellSouth stated it was prepared to use the audit firm of Grant Thornton, LLP rather than ACA to avoid any further dispute regarding the independence of the audit firm utilized.³

On December 17, 2004, the Authority received a letter from the CLECs in which the CLECs reiterated several concerns regarding the audit. Specifically, the CLECs questioned whether the audits would conform to applicable American Institute of Certified Public Accountants standards and requested that the audit firm, rather than BellSouth, formulate the methodology used in the audit. Additionally, the CLECs were concerned as to the particular methodology used in performing the audit, in that, the CLECs argued that the auditor should examine only records from a random sample of circuits rather than a random sample of records for every circuit, as BellSouth's engagement letter proposed. Finally, the CLECs requested that TRA staff monitor the audits and be available to mediate disputes.

APRIL 4, 2005 AUTHORITY CONFERENCE

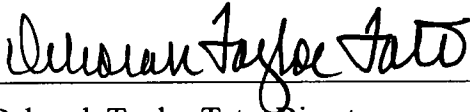
As a result of the request by the Parties and the fact that several issues and motions have emerged in this Docket since the adoption of the *Report and Recommendation*, at a regularly scheduled Authority Conference held on April 4, 2005, the panel voted unanimously to delegate to the Hearing Officer the authority to dispose of existing post-hearing issues in this matter. In addition, the panel requested that the Hearing Officer dispose of the issues within sixty (60) days.

² On March 14, 2005, the Hearing Officer issued a letter to the Parties stating that upon further consideration, it was her opinion that she did not have the authority to act with regard to post-hearing issues without further delegation of authority by the TRA

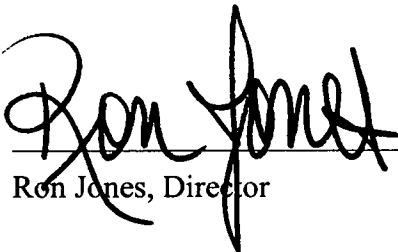
³ At the December 1, 2004 status conference, the CLECs raised concerns regarding the prospective audits. Specifically, concern was raised as to whether ACA would meet the qualifications of the American Institute of Certified Public Accountants standards for independence. Additionally, the CLECs were concerned as to who would be responsible for developing the appropriate methodology for the audit.

IT IS THEREFORE ORDERED:

1. The Hearing Officer in this matter is delegated the authority to dispose of all existing post-hearing disputes in this matter.


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director